

89-1100

No. _____

Supreme Court, U.S.

FILED

JAN 5 1990

JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

PEGGY ROBINSON,
Petitioner,

versus

RANDOLPH POURCIAU, JR., WAYNE ROGILLIO, and
CITY OF BATON ROUGE,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Attorneys for Petitioner:

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AND

JOHNNIE A. JONES, JR. (Bar No. 1083)

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THE QUESTION PRESENTED FOR REVIEW

Whether it was within the discretion of the District Court to decline to accept pendent jurisdiction of Petitioner's state law claims; and, if so, did the District Court abuse that discretion where it is shown that such action by the District Court creates and causes undue hardship upon Petitioner by duplication of litigation costs and expenses arising out of a single-occurrence incident of alleged police brutality pleaded under federal statute, 42 U.S.C. § 1983 (App. N, *infra*, 1n); which, if such ruling of the District Court is allowed to stand, would require her (petitioner) to choose separate and different tribunals and to piecemeal try and dispose of disputed single-occurrence issues and claims between the parties; and, thereby, deny her equal protection of laws accorded her by the Fifth and Fourteenth Amendments of the Constitution of the United States (Appendixes E and F, *infra*)?

LIST OF PARTIES TO THE PROCEEDING

PETITIONER:

PEGGY ROBINSON, a near 55-year-old black female of legal competence, a resident of the Parish of East Baton Rouge, State of Louisiana; and of the United States.

RESPONDENTS:

RANDOLPH POURCIAU, JR., a white male police officer of the Department of Police of the City of Baton Rouge, Louisiana.

WAYNE ROGILLIO, a white male and Chief of the Department of Police of the City of Baton Rouge, Louisiana.

CITY OF BATON ROUGE, a municipal corporation, the Parish Seat of the Parish of East Baton Rouge, Louisiana.

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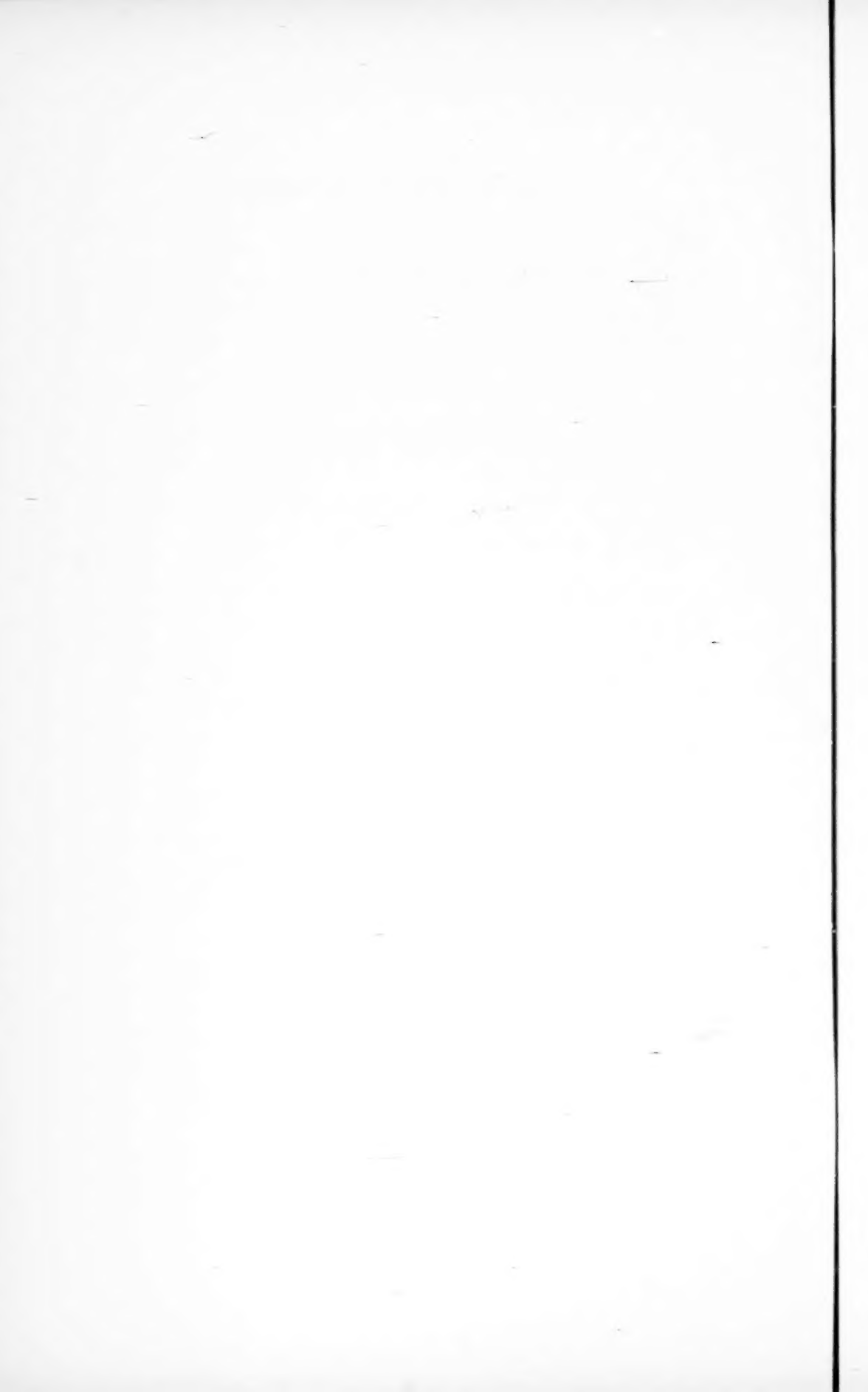
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None.	
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None.	



No. _____

**In the
Supreme Court of the United States**

OCTOBER TERM, 1989

PEGGY ROBINSON,
Petitioner,

versus

RANDOLPH POURCIAU, JR.,
WAYNE ROGILLIO, and
PAT SCREEN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Peggy Robinson, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra*, 1a-3a) is not reported; and the opinion/ruling (App. B, *infra*, 1b-2b) and order (App. C, *infra*, 1c) of the District Court are not reported.

JURISDICTIONAL STATEMENTS

The opinion of the Court of Appeals (App. A, *infra*, 1a-3a), of which review is sought, was filed August 24, 1989, and entered August 25, 1989; and was received by Petitioner's counsel of record on August 28, 1989.

On November 15, 1989, Mr. Justice White signed an order (App. D, *infra*, 1d) extending the time for Petitioner to file a petition for a writ of certiorari in the above-entitled case to and including January 6, 1990.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States, Amendment V (App. E, *infra*, 1e); and Amendment XIV, § 1 (App. F, *infra*, 1f); and LSA-Const. Art. I, §§ 1, 2, and 3 (App. L, *infra*, 1L-2L).

STATUTORY PROVISIONS INVOLVED

The federal and state statutes involved are:

28 U.S.C. § 1331 (App. G, *infra*, 1g).

28 U.S.C. § 1343 (App. H, *infra*, 1h).

42 U.S.C. § 1983 (App. N, *infra*, 1n).

LSA-C.C. art. 2315 (App. I, *infra*, 1i).

LSA-C.C.P. arts. 1731, 1732, 1733, 1734, 1734.1, 1735, and 1736 (App. J, *infra*, 1j-4j).

The pertinent texts of the foregoing are set forth in the Appendix, *infra*.

STATEMENT OF THE CASE

The petitioner, Peggy Robinson, who, on October 12, 1987, was involved in a two-car collision; and the defendant, Randolph Pourciau, Jr., without any apparent reasons used unnecessary, excessive, abusive and out-right brutal force in effecting an unlawful arrest upon her in violation of her accorded constitutional rights.

The allegations of Paragraphs 12, 13, 15, and 16 of petitioner's Complaint (App. K, *infra*, 1k-9k) set forth the basic facts on which her state-law claims are predicated under pendent jurisdiction, LSA-Const. Art. I, §§ 1, 2, and 3 (App. L, *infra*, 1L-2L), and LSA-C.C. art. 2315 (App. I, *infra*, 1i), and in her memorandum supported "Motion to Reinstate and Maintain Pendent-Claims Jurisdiction" (App. M, *infra*, 1m-6m), which was denied by the District Court.

REASONS FOR GRANTING THE WRIT

Unless Petitioner's state law claims are presented for jury determination along with her primary claims pleaded under 42 U.S.C. § 1983 (App. N, *infra*, 1n), the jury will be unable to effectively do complete justice and dispose of the disputed single-occurrence issues and claims between the parties (App. O, *infra*, 1o-3o); and petitioner will be procedurally inconvenienced by having to piecemeal litigate this lawsuit under the

controlling Pretrial Order, together with modification and amendment (App. P, *infra*, 1p-23p); and, thereby, be forced to duplicate litigation costs, expenses and charges of six (6) expert witnesses [Cf. App. P, *infra*, 18p-19p.] and court costs, under the economically undue hardship of having to furnish a very substantial jury bond under the requirements of LSA-C.C.P. arts. 1731-1736 (App. J, *infra*, 1j-4j).

The result of the "single-occurrence standard" for the purpose of conferring on the Court pendent-claim jurisdiction is one of convenience. When parties have conflicting claims arising from a single occurrence, it is undesirable to require that the litigation be divided between state and federal courts. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

To reinstate and retain for trial the Petitioner's state-law claims for jury determination in this case pending before the United States District Court for the Middle District of Louisiana (Section B), under the concept of pendent-claim jurisdiction, would be a solution to the hardship, economical problems of piecemeal litigation posed by the District Court's decline of Petitioner's well pleaded tort action against Respondents in her state-law claims.

"The notion that a party must go to several forums to obtain relief in any given situation, deriving from the ancient and formalistic distinctions between law and equity, has been discredited. The important policy of having one single expeditious resolution of a dispute has thus led to the doctrine of ancillary jurisdiction and analogous practices of courts." *Morrow v. District of Columbia*, 417 F.2d 728, 135 U.S. App. D.C. 160 (per Wright J.).

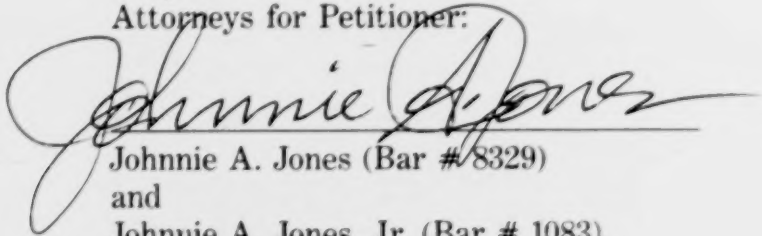
To reinstate and retain pendent-claim jurisdiction in this case would not be inconsistent with the cases of: *IMFC Professional Servs. of Florida, Inc. v. Latin-American Home Health, Inc.*, 676 F.2d 152 (5th Cir. 1982); *Cenco, Inc. v. Seidman & Seidman*, 686 F.2d 449, certiorari denied 459 U.S. 880, 103 S.Ct. 177, 74 L.Ed.2d 145 (7th Cir. 1982).

Joinder of claims, parties and remedies is strongly encouraged. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966).

CONCLUSION

For the foregoing reasons, petitioner, Peggy Robinson, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals, Fifth Circuit.

Respectfully submitted,
Attorneys for Petitioner:

A large, stylized handwritten signature in cursive script, appearing to read "Johnnie A. Jones", is written over a horizontal line.

Johnnie A. Jones (Bar # 8329)

and

Johnnie A. Jones, Jr. (Bar # 1083),

Co-counsel of Record

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Telephone: (504) 383-8573

Dated: January 4, 1990

CERTIFICATE OF SERVICE

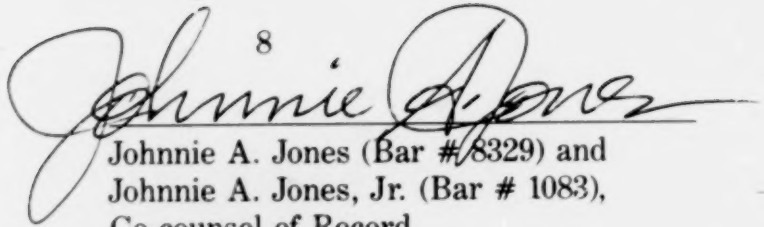
Undersigned counsel of record for the petitioner, Peggy Robinson, does hereby certify that a copy of the above and foregoing

PETITION FOR WRIT OF CERTIORARI
is being forwarded to the opposing counsel of record by regular United States Mail, first-class postage prepaid, addressed as follows:

Mr. Lynn E. Williams
Parish Attorney
Office of the Parish Attorney
222 St. Louis Street
Post Office Box 1471
Baton Rouge, Louisiana 70821
Telephone: (504) 389-3114

Mr. Samuel R. Cicero
Assistant Parish Attorney
CICERO & MOAK
Attorneys and Counselors at Law
4521 Jamestown Avenue, Suite 5
Baton Rouge, Louisiana 70808-3265
Telephone: (504) 926-6820

Baton Rouge, Louisiana, this 4th day of January, 1990.

A large, stylized handwritten signature in cursive script, reading "Johnnie A. Jones". The signature is written in dark ink and is positioned above the printed text.

Johnnie A. Jones (Bar #8329) and
Johnnie A. Jones, Jr. (Bar # 1083),

Co-counsel of Record

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CITY OF BATON ROUGE,
Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

○

APPENDIXES

Attorneys for Petitioner:

JOHNNIE A. JONES (Bar No. 8329)

AND

JOHNNIE A. JONES, JR. (Bar No 1083)

Co-Counsel of Record

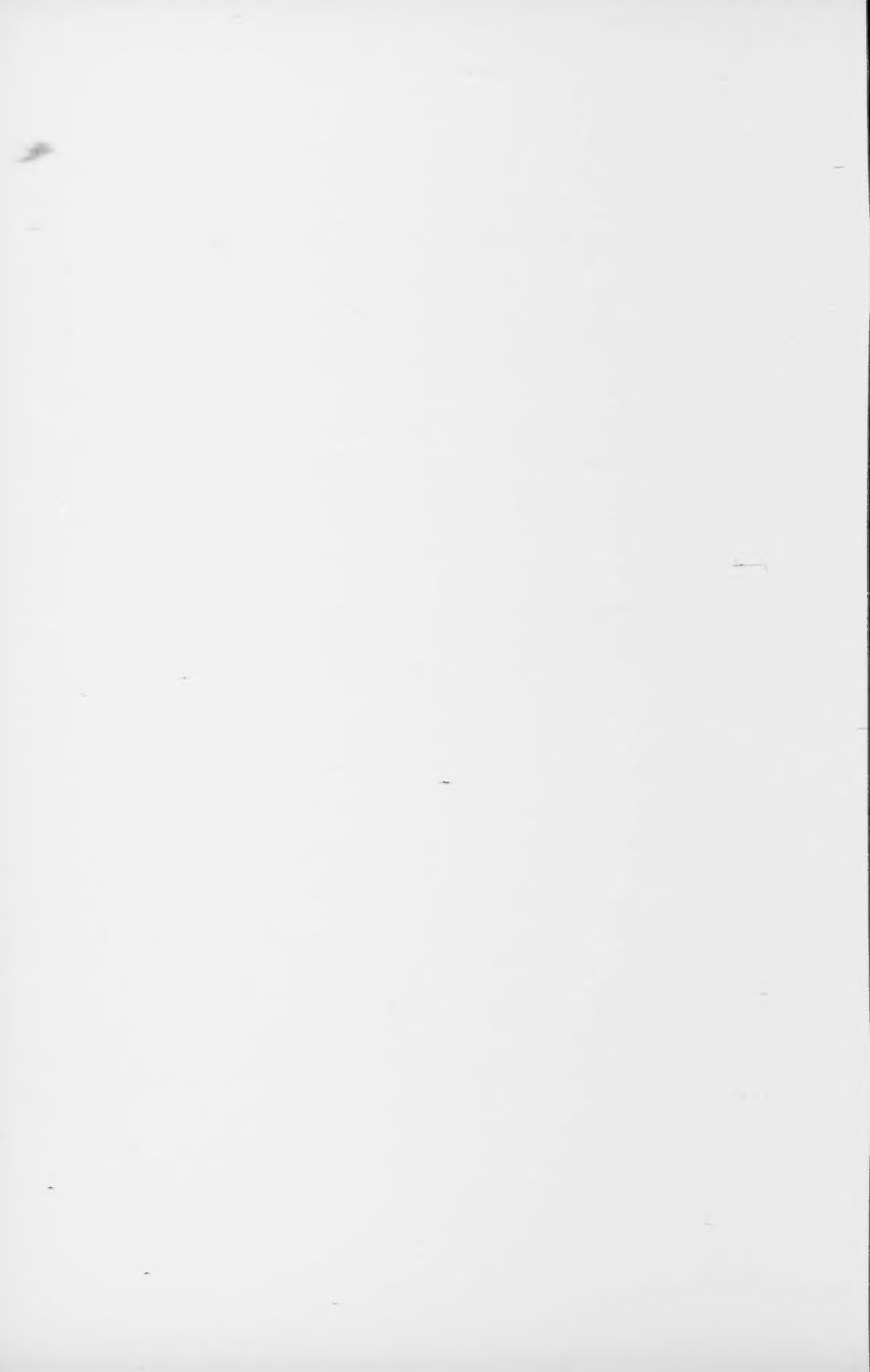
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APPENDIX 'A'

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NO. 89-3550

USDC # CA 88-860 B

IN RE:
PEGGY ROBINSON,
Petitioner.

On Petition for Writ of Mandamus and/or Prohibition
to the United States District Court for the
Middle District of Louisiana

Before WILLIAMS, HIGGINBOTHAM and SMITH, Circuit
Judges

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus
and/or prohibition is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

MEMORANDUM TO COUNSEL OR PARTIES LISTED
BELOW:

NO. 89-3550 - IN RE: PEGGY ROBINSON
USDC NO. CA 88-860 B

The following action has been taken in the above case:

- ☐ AN EXTENSION OF TIME has been granted to and including
 - ☐ for filing appellant's/petitioner's brief.
 - ☐ for filing appellee's/respondent's brief.
 - ☐ for filing reply brief.
 - ☐ for filing petition for rehearing.
 - ☐
- ☐ Motion to consolidate granted.
- ☐ Motion to supplement or correct the record granted.
- ☐ Motion for leave to file supplemental brief granted.
- ☐ Motion for leave to file brief *amicus curiae* is granted.
- ☐ Joint motion as to time for filing briefs granted.

☒ Order enclosed has been entered.

☐

Gilbert F. Ganucheau, Clerk

s/DELLA J. FRANKLIN
Della J. Franklin
Deputy Clerk

cc: Mr. Johnnie A. Jones, Sr.

Mr. Frank J. Polozola

Mr. Samuel R. Cicero

Office of Parish Attorney

Mr. C. Lee Dupuis, Clerk



APPENDIX 'B'

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

MINUTE ENTRY:
JULY 5, 1989
POLOZOLA, J.

PEGGY ROBINSON
VERSUS
RANDOLPH POURCIAU, JR., ET AL

CIVIL ACTION NO. 88-860-B

A pretrial conference was held this date.

Present: Johnnie A. Jones, Attorney for plaintiff; and
Samuel R. Cicero, Attorney for defendants

Also present: Peggy Robinson

Supplementing the pretrial order:

The parties shall exchange all expert reports on or before August 7, 1989 or that expert shall not be allowed to testify at the trial.

The plaintiff will advise the Court on or before August 7, 1989 whether she will voluntarily dismiss her suit against the City of Baton Rouge and Wayne Rogillio.

Because of the difference in the elements of proof and to avoid confusion before the jury, the Court declines to accept pendent jurisdiction over the state law claims and the state law claims will be dismissed without prejudice.

s/FRANK J. POLOZOLA
Frank J. Polozola
United States District Judge

APPENDIX 'C'

**IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA**

PEGGY ROBINSON,
Plaintiff,
VERSUS
RANDOLPH POURCIAU, JR., ET AL.,
Defendants.

CIVIL ACTION NO. 88-860
SECTION 'B'

ORDER

CONSIDERING foregoing motion of plaintiff, Peggy Robinson, suggesting that her state-law claims be reinstated and retain to be tried on the merits and determined by the jury with her federal claims under 42 U.S.C. §1983; and the law appearing to be in favor hereof:

IT IS ORDERED that the Plaintiff's motion be, and same is hereby DENIED.

Baton Rouge, Louisiana, this 8th day of August, 1989.

s/FRANK J. POLOZOLA
Frank J. Polozola
Judge
United States District Court

APPENDIX 'D'

Supreme Court of the United States

NO. A89-370

PEGGY ROBINSON,
Applicant,
VERSUS
RANDOLPH POURCIAU, JR., ET AL.

ORDER EXTENDING TIME TO FILE
PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 6, 1990.

s/BYRON R. WHITE
Byron R. White
Associate Justice of the Supreme Court
of the United States

Dated this 15th day of November, 1989.

APPENDIX 'E'**CONSTITUTION OF THE UNITED STATES****AMENDMENT V - CAPITAL CRIMES; DOUBLE
JEOPARDY; SELF-INCRIMINATION; DUE PROCESS;
JUST COMPENSATION FOR PROPERTY**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**AMENDMENT V
GRAND JURY INDICTMENT FOR CAPITAL CRIMES**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger.

APPENDIX 'F'**CONSTITUTION OF THE UNITED STATES****AMENDMENT XIV. - CITIZENSHIP;
PRIVILEGES AND IMMUNITIES; DUE PROCESS;
EQUAL PROTECTION; APPORTIONMENT OF
REPRESENTATION; DISQUALIFICATION OF
OFFICERS; PUBLIC DEBT; ENFORCEMENT**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 'G'

JUDICIARY - PROCEDURE

28 U.S.C. § 1331.

FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX 'H'**DISTRICT COURTS; JURISDICTION**

28 U.S.C. § 1343.

CIVIL RIGHTS AND ELECTIVE FRANCHISE

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

APPENDIX 'I'

CHAPTER 2 - OF OFFENSES AND QUASI OFFENSES

LSA-C.C. art. 2315.

LIABILITY FOR ACTS CAUSING DAMAGES

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

Damages may include loss of consortium, service, and society, and shall be recoverable by the same respective categories of persons who would have had a cause of action for wrongful death of an injured person.

APPENDIX 'J'

CHAPTER 7. JURY TRIAL

SECTION 1. RIGHT TO TRIAL BY JURY

LSA-C.C.P. art. 1731.

ISSUES TRIABLE BY JURY

A. Except as limited by Article 1732, the right of trial by jury is recognized.

B. The nature and amount of the principal demand shall determine whether any issue in the principal or incidental demand is triable by jury.

(Notes omitted.)

LSA-C.C.P. art. 1732

LIMITATION UPON JURY TRIALS

A trial by jury shall not be available in:

(1) A suit where the amount in dispute does not exceed twenty thousand dollars exclusive of interest and costs.

(2) A suit on an unconditional obligation to pay a specific sum of money, unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

(3) A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, worker's compensation, emancipation, tutorship, interdiction, curatorship, legitimacy, filiation, separation from bed and board, annulment of marriage, or divorce proceeding.

(4) A proceeding to determine custody, visitation, alimony, or child support.

(5) A proceeding to review an action by an administrative or municipal body.

(6) A suit on an admiralty or general maritime claim under federal law that is brought in state court under a federal "saving to suitors" clause, if the plaintiff has designated that suit as an admiralty or general maritime claim.

(7) All cases where a jury trial is specifically denied by law.

(Notes omitted.)

LSA-C.C.P art. 1733.

DEMAND FOR JURY TRIAL; BOND FOR COSTS

A. A party may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond in the amount and within the time set by the court pursuant to Article 1734.

B. A motion to withdraw a demand for a trial by jury shall be in writing.

C. The pleading demanding a trial shall be filed not later than ten days after either the service of the last pleading directed to any issue triable by a jury, or the granting of a motion to withdraw a demand for a trial by jury.

LSA-C.C.P. art. 1734.

FIXING THE BOND; CALLING THE JURY VENIRE

A. Except as otherwise provided by R.S. 13:3105 et seq., when the case has been set for trial, the court shall fix the amount of the bond to cover all costs related to the trial by jury and shall fix the time for filing the bond. Notice of the fixing of the bond shall be served on all parties. If the bond is not filed timely, any other party shall have an additional ten days to file the bond.

B. When the bond has been filed, the clerk of court shall order the jury commission to draw a sufficient number of jurors to try and determine the cause, such drawing to be made in accordance with R.S. 3:3044.

LSA-C.C.P. art. 1734.1.

CASH DEPOSIT; PROCEDURE

A. The court may order, in lieu of the bond required in Article 1734, a deposit for costs which shall be a specific cash amount to be filed within seven days prior to trial. The deposit shall include sufficient funds for payment of all jury costs, not to exceed three hundred dollars per day. The duration of trial for the purposes of determining the costs shall be in accordance with the estimate of duration of trial as provided in the pretrial order or in the motion fixing the matter for trial. If a cash deposit is ordered, no trial by jury shall commence until the deposit has been paid.

B. The clerk of court may disburse funds from the cash deposit for payment of all or a part of the jury costs as such costs accrue. The clerk shall keep a record of funds disbursed by him from the cash deposit.

C. The court may require an additional amount to be filed during the trial if the original amount of the cash deposit is insufficient to pay jury costs.

D. The funds disbursed from the cash deposit for payment of jury costs shall be assessed as costs of court.

E. After payment of all jury costs, any unexpended amounts remaining in the cash deposit shall be refunded by the clerk of court to the party filing the cash deposit.

LSA-C.C.P. art. 1735.

SPECIFICATION OF ISSUES

In his demand a party may specify the issues which he wishes to be tried by jury; otherwise, he shall be considered to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party, within ten days after service of the demand, may demand trial by jury of any or all of the other issues in the action.

LSA-C.C.P. art. 1736.

TRIAL OF LESS THAN ALL ISSUES; STIPULATION

The trial of all issues for which a jury trial has been requested shall be by jury, unless the parties stipulate that the jury shall be as to certain issues only or unless the right to trial by jury as to certain issues does not exist; however, except as otherwise provided under the provisions of Article 1562, there shall be but one trial.

APPENDIX 'K'

**IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA**

NO. 88-860-B

PEGGY ROBINSON

Plaintiff

VERSUS

RANDOLPH POURCIAU, JR.,

WAYNE ROGILLIO, CITY OF BATON ROUGE

Defendants

**FIRST AMENDING AND
SUPPLEMENTAL COMPLAINT**

I. NATURE OF THE PROCEEDINGS

1. This is a civil action seeking damages against the defendants for committing unlawful acts under color of law, and for denial of equal protection under the laws on account of plaintiff's race, which acts substantially deprived plaintiff of rights secured under the Constitution and laws of the United States and/or the State of Louisiana.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction of this action under 42 U.S.C. § 1983 and 28 U.S.C. § 1343.
3. Jurisdiction of the Court is further invoked pursuant to 42 U.S.C. § 1981.
4. Jurisdiction of the Court is further invoked pursuant to 28 U.S.C. § 1331.
5. Jurisdiction of the Court is further invoked pursuant to the First, Fourth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
6. This Court's pendent jurisdiction is invoked with respect to the claims arising under Article I, Sections 2 and 3 of the Louisiana Constitution of 1974, and under Louisiana Civil Code Article 2315.
7. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

III. PARTIES TO THE PROCEEDINGS

8. Plaintiff, PEGGY ROBINSON, a major, Black and citizen of the State of Louisiana, is domiciled in the Parish of East Baton Rouge Parish.
9. Defendant, RANDOLPH POURCIAU, JR., badge number 336, is an officer in the Baton Rouge Police Department. He is sued individually and in his official capacity.
10. Defendant, WAYNE ROGILLIO, was at all times described in this complaint Chief of Police of the CITY OF BATON ROUGE. As such, he was the commanding officer of the defendant and was responsible for the training, supervision, and conduct of defendant. He is also responsible by law for enforcing the regulations of the Baton Rouge City Police Department and for ensuring that the

Baton Rouge City Police officers obey the laws of the State of Louisiana and the United States. He is sued individually and in his official capacity.

11. The defendant, CITY OF BATON ROUGE is a municipal corporation within the State of Louisiana and at all times relevant hereto employed the defendants, RANDOLPH POURCIAU, JR. and WAYNE ROGILLIO, as police officer and Chief of Police, respectively.

IV. STATEMENT OF CLAIM

12. On or about October 12, 1987, plaintiff, PEGGY ROBINSON, was proceeding south on Airline Highway when she was struck, on the left side, by a vehicle operated by another motorist.
13. Defendant, RANDOLPH POURCIAU, JR., attempted to arrest plaintiff for no apparent reason. Defendant, RANDOLPH POURCIAU, JR., threatened to arrest the plaintiff while pulling her from the vehicle in which she was seated, while she was hand cuffed, then dragging her across the pavement, then kneed her in the back and kicked her several times. Plaintiff had previously warned the defendant about the condition of her back.
14. Plaintiff had committed no illegal act at the time of the attempted arrest and at no time did she use any force or resistance.
15. In effecting this arrest, defendant used excessive, abusive and unnecessary force and/or out-right brutal force on the person of the plaintiff. The defendant, RANDOLPH POURCIAU, JR., pushed and shoved the plaintiff while shouting he would show the plaintiff about her constitutional rights. After injuring the plaintiff, the defendant, RANDOLPH POURCIAU, JR., then refused to secure medical treatment for the plaintiff, PEGGY ROBINSON.

16. Defendant, RANDOLPH POURCIAU, JR., caused plaintiff to be charged with resisting arrest, improper lane usage and no proof of insurance, although no probable cause existed for said charges.
17. The acts of defendant, POURCIAU, constitute unlawful arrest, false imprisonment, excessive use of force which caused serious injury, unnecessary force, abusive force and/or police brutality, all in violation of the First, Fourth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; 42 U.S.C. § 1981 and § 1983; Article I, Sections 2 and 3 of the Louisiana Constitution of 1974; and Article 2315 of the Louisiana Civil Code.
18. Defendant POURCIAU's actions were motivated by the race of the plaintiff, which is a denial of equal protection of the law.
19. (a) The acts of defendant, RANDOLPH POURCIAU, JR., were under color of state law and, as referred to previously herein, were condoned and acquiesced in by the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO, under color of state law and under color and pretense of the statutes, ordinances, regulations, customs and usages of the State of Louisiana and the City of Baton Rouge, and under the authority of their officers as officials of the City of Baton Rouge.
 - (b) The excessive use of force by the defendant, RANDOLPH POURCIAU, JR., caused the plaintiff, PEGGY ROBINSON, serious injury in that her vertebrae was fractured at the L3 joint which was complicated by osteosclerosis with contusions to the buttocks and severe strain to the right elbow and right knee. Plaintiff, PEGGY ROBINSON, has been unable to continue in her employment in the same manner he did prior to the incident which is the subject of this law suit.

- (c) The defendants, CITY OF BATON ROUGE and CHIEF WAYNE ROGILLIO, adopted a policy of allowing this police officer, or its police officers to wrongfully arrest and abuse citizens under color of the laws of the State of Louisiana and ordinances of the City of Baton Rouge, by remaining indifferent to numerous complaints filed by citizens against its police officers and against defendant, POURCIAU, in particular.
- (d) Although a departmental investigation was conducted, the police department condoned the actions of the defendant, RANDOLPH POURCIAU, JR., by not recommending disciplinary action and subsequently promoting this particular officer, increasing his grade and rank.
- (e) The actions of defendant, POURCIAU, resulted from and were taken pursuant to a de facto policy of the defendants, CITY OF BATON ROUGE and CHIEF ROGILLIO, acting under color of the laws of the State of Louisiana and the City of Baton Rouge, to deny equal protection of the laws to some citizens of the City of Baton Rouge, including Plaintiff, by means of unlawful arrest, detention and excessive use of force.
- (f) Defendants, CITY OF BATON ROUGE's and WAYNE ROGILLIO's, policy and custom of failure to adequately train, supervise and discipline defendant, POURCIAU, and other officers of the Baton Rouge Police Department in the exercise of their police duties, and their failure to enforce the laws of the United States, State of Louisiana and the regulations of the Baton Rouge Police Department, while acting under color of state law and city ordinances, were carried out in a willful and wanton disregard for the constitutionally protected rights of a portion of the

citizens of the City of Baton Rouge. This policy of the Department is illustrated by the following non exclusive acts:

- (1) Officer Rhodes, after shooting and killing an unarmed black man, was allowed to remain on the force.
 - (2) Officer Michael Gillen was allowed to remain on traffic patrol after a Deputy Police Chief, John B. Firmin recommended that he be removed because of complaints made against him.
 - (3) Sargeant Howe was allowed to remain on the force after being charged with murder. The police chief did not take action to remove him from the force until after his conviction.
20. The actions of the defendants, RANDOLPH POURCIAU, JR., CITY OF BATON ROUGE and WAYNE ROGILLIO, were conducted under color of state law; under the guise of ordinances and policies of the City of Baton Rouge; and under the regulations, customs, policies and practices of the Baton Rouge Police Department. Said action of the defendants, CITY OF BATON ROUGE and WAYNE ROGILLIO caused and/or allowed the defendant, RANDOLPH POURCIAU, JR., to violate plaintiff's, PEGGY ROBINSON's, constitutional rights, together with malicious prosecution through the criminal justice system. The Constitutional deprivations suffered by the plaintiff, PEGGY ROBINSON, at the hands of defendant, RANDOLPH POURCIAU, JR., were pursuant to governmental policy and custom of the defendant, CITY OF BATON ROUGE, and departmental policy and custom of the Baton Rouge Police Department and defendant, WAYNE ROGILLIO.

21. Although Louisiana Code of Criminal Procedure article 211 provides that the officer shall give a written summons if: (1) the person will appear; (2) is not likely to hurt himself; and (3) there is no necessity to book the person to comply with routine identification procedures, the defendant attempted to arrest the plaintiff, PEGGY ROBINSON.
22. Defendant, CITY OF BATON ROUGE and WAYNE ROGILLIO, breached their duty owed to members of the public, of which plaintiff is one, to adequately train, supervise, and discipline defendant, POURCIAU, and other officers of the Baton Rouge Police Department in the exercise of their police duties; and to enforce the laws of the United States, State of Louisiana and the regulations of the Baton Rouge Police Department.
23. The breach of duty owed to plaintiff and citizens of Baton Rouge by the defendant, CITY OF BATON ROUGE and CHIEF ROGILLIO, caused the plaintiff to suffer damages, inequities, and degradation of her constitutional rights, all as outlined herein above.
24. Defendants are liable to the plaintiff for damages.
25. Plaintiff desires a TRIAL BY JURY, accorded to him by the Seventh Amendment of the Constitution of the United States, and authorized in this action under the provisions of 28 U.S.C. § 1981, in the manner therein prescribed; and by Rule 38(a) and (b) of the Federal Rules of Civil Procedure, 28 U.S.C.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiff, PEGGY ROBINSON, requests the following relief, in solido, against the defendants:

1. Compensatory damages in the amount of \$2,500,000.00;

2. Reasonable attorneys' fees at the rate of \$250.00 per hour, or in the amount of 33 1/3% of the aggregate amount that may be recovered, whichever is greater, plus out-of-pocket expenses, and costs;
3. Such other and further relief as appears legal, just and reasonable, in law and equity; and
4. For a TRIAL BY JURY, accorded to Plaintiff by the Seventh Amendment of the Constitution in the manner prescribed under the provisions of 28 U.S.C. § 1861; and authorized by Rule 38(a) and (b) of the Federal Rules Civil Procedure, 28 U.S.C.

Respectfully submitted,

s/JOHNNIE A. JONES, JR.
Johnnie A. Jones, Jr.
JONES & JONES, Attorneys at Law
251 Florida Street, Suite 215
Baton Rouge, Louisiana 70801
Phone: (504) 383-8573

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff, PEGGY ROBINSON, does hereby certify that on this 27th day of Feb. 1989, a copy of the above and foregoing 'First Amending and Supplemental Complaint', has been mailed by regular first class U.S. mail to:

Mr. Samuel R. Cicero
CICERO AND MOAK
Attorneys and Counselors at Law
Suite 5, 4521 Jamestown Avenue
Baton Rouge, Louisiana 70808-3265

s/JOHNNIE A. JONES, JR.
Johnnie A. Jones, Jr.

APPENDIX 'L'**LOUISIANA CONSTITUTION OF 1974****ARTICLE I.
DECLARATION OF RIGHTS****§ 1. ORIGIN AND PURPOSE OF GOVERNMENT**

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

§ 2. DUE PROCESS OF LAW

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

§ 3. RIGHT TO INDIVIDUAL DIGNITY

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against

a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

APPENDIX 'M'

**IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA**

PEGGY ROBINSON,
Plaintiff,
VERSUS
RANDOLPH POURCIAU, JR.,
ET AL.,
Defendants.

CIVIL ACTION NO. 88-860
SECTION 'B'

**MOTION TO RE-INSTATE AND
RETAIN PENDENT-CLAIMS JURISDICTION**

NOW INTO COURT, through her undersigned counsel of record, comes the plaintiff, PEGGY ROBINSON, who, pursuant to Rule 7(b) of the Federal Rules of Civil Procedure, invokes Rules 8(e)(2) and 18(a) of the Federal Rules of Civil Procedure and represents to the Court that she excepts to the Court declining jurisdiction of her state-law claims, or non-federal claims, pleaded in her complaint; and, therefore, moves the Court to re-instate and retain such claims for the trial on the merits and jury determination, for these reasons, to-wit:

1. Unless the Plaintiff's state-law claims are presented to the jury for determination along with her primary claims pleaded under the federal statute (42 U.S.C. § 1983), the jury will be unable to effectively do complete justice and dispose of the disputed single-occurrence issues and claims between the parties; and, therefore, Plaintiff will be procedurally inconvenienced by having to piecemeal litigate this lawsuit.
2. Piecemeal litigation of this lawsuit will cause economically undue hardship upon Plaintiff; and deny to her the right to choose, for purposes of obtaining economical and expeditious disposition of her case, the Federal Court to have her case tried.

Respectfully submitted,
Attorneys for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones, (Bar # 8329),
and
Johnnie A. Jones, Jr.,
Trial Attorneys
JONES & JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: (504) 383-8573

Date: August 7, 1989

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

PEGGY ROBINSON,
Plaintiff,
VERSUS
RANDOLPH POURCIAU, JR.,
ET AL.,
Defendants.

CIVIL ACTION NO. 88-860
SECTION 'B'

MEMORANDUM
SUPPORTING MOTION TO RE-INSTATE
AND RETAIN PENDENT-CLAIMS
JURISDICTION

MAY IT PLEASE THE COURT:

The result of the "single-occurrence standard" for the purpose of conferring on the Court pendent-claim jurisdiction is one of convenience. When parties have conflicting claims arising from a single occurrence, it is undesirable to require that the litigation be divided between state and federal courts. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L.Ed.2d 218 (1966).

To re-instate and retain for trial in this case the plaintiff's state-law claims for jury determination under the concept of pendent-claim jurisdiction would be a solution to the hardship, economical problems of piecemeal litigation posed by the Court's decline of plaintiff's well-pleaded tort action against the Defendants in her state-law claims.

"The notion that a party must go to several forums to obtain relief in any given situation, deriving from the ancient and formalistic distinctions between law and equity, has been discredited. The important policy of having one single expeditious resolution of a dispute has thus led to the doctrine of ancillary jurisdiction and analogous practices of courts." *Morrow v. District of Columbia*, 417 F.2d 728, 738, 135 U.S. App. D.C. 160 (per Wright J.).

To reinstate and retain pendent-claim jurisdiction in this case will not be inconsistent with the cases of: *IMFC Professional Servs. of Florida, Inc. v. Latin-American Home Health, Inc.*, 676 F.2d 152 (C.A.5th 1982); *Cenco, Inc. v. Seidman & Seidman*, 686 F.2d 449, certiorari denied 459 U.S. 880, 103 S.Ct. 177, 74 L.Ed.2d 145 (C.A.7th 1982).

There is no restriction on the joinder of claims under Rule 18(a), except for the limitations imposed by the requirements of federal matter jurisdiction. Joinder of claims, parties and remedies is strongly encouraged. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966).

It is submitted that Plaintiff's state-law claims should be re-instated and retained for trial on the merits, and for jury determination as originally demanded by plaintiff, PEGGY ROBINSON, in her complaint.

Respectfully submitted,
Attorneys for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones, (Bar # 8329),
and
Johnnie A. Jones, Jr.,
Trial Attorneys
JONES & JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: (504) 383-8573

Date: August 7, 1989



6m

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

PEGGY ROBINSON,
Plaintiff,
VERSUS
RANDOLPH POURCIAU, JR.,
ET AL.,
Defendants.

CIVIL ACTION NO. 88-860
SECTION 'B'

ORDER

CONSIDERING foregoing motion of plaintiff, Peggy Robinson, suggesting that her state-law claims be reinstated and retain to be tried on the merits and determined by the jury with her federal claims under 42 U.S.C. § 1983; and the law appearing to be in favor hereof:

IT IS ORDERED that the Plaintiff's motion be and same is hereby denied.

Baton Rouge, Louisiana, this 8 day of August, 1989.

s/FRANK J. POLOZOLA
Frank J. Polozola, Judge
United States District Court



APPENDIX 'N'

CIVIL RIGHTS

42 U.S.C. § 1983.

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29 1979, 93 Stat. 1284.



APPENDIX 'O'

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**PEGGY ROBINSON
VERSUS
RANDOLPH POURCIAU, ET AL**

CIVIL ACTION NO. 88-860-B

**ANSWER OF THE CITY OF BATON ROUGE,
RANDOLPH PURCIAU, JR. AND WAYNE ROGILLIO
TO THE FIRST AMENDING AND
SUPPLEMENTAL COMPLAINT**

**TO THE HONORABLE, THE JUDGES OF THE UNITED
STATES DISTRICT COURT, WITHIN AND FOR THE
MIDDLE DISTRICT OF LOUISIANA:**

NOW INTO COURT, through undersigned counsel, comes the City of Baton Rouge, Randolph Pourciau, Jr. and Wayne Rogillio, purportedly made defendants herein, and with respect aver, allege and state as follows:

**I.
FIRST DEFENSE**

The complaint of plaintiff fails to state a claim against these defendants upon which relief can be granted.

II.

SECOND DEFENSE

This court is without jurisdiction in this matter inasmuch as there is no diversity of citizenship between the parties hereto.

III.

THIRD DEFENSE

This court is without jurisdiction as to all claims asserted by plaintiff because the said complaint fails to state a claim for relief as to these defendants under the Constitution of the United States or any of the United States Statutes, particularly but not necessarily exclusively, the statutes known variously as the Civil Rights Act.

IV.

FOURTH DEFENSE

In response to the individual numbered paragraphs of Plaintiff's complaint, defendants aver, as follows:

V.

The allegations contained in paragraphs 8 through 25 of plaintiff's First Amending and Supplemental Complaint are denied.

VI.

And further answering respoindeents deny that it or any of its employees were guilty of any negligence or wrongdoing or committed any fault in regard to the incident sued upon. Respondents show that any police officers involved were acting in good faith and with probable cause at all times.

WHEREFORE, defendants, City of Baton Rouge, Randolph Pourciau, Jr. and Wayne Rogillio, pray that this answer be deemed good and sufficient and that the First Amending and Supplemental Complaint filed herein by plaintiff be dismissed at her cost.

By Attorneys,
Lynn E. Williams
Parish Attorney

s/SAMUEL R. CICERO
Samuel R. Cicero



APPENDIX 'P'

**IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT COURT OF LOUISIANA**

NO. 88-860-B

PEGGY ROBINSON

Plaintiff,

VERSUS

RANDOLPH POURCIAU, JR.,
WAYNE ROGILLIO, and
PAT SCREEN

Defendants.

PRE-TRIAL ORDER

Pre-trial conference was held before Judge Frank J. Polozola at Baton Rouge, Louisiana, on Wednesday, July 5, 1989, at 3:30 p.m.

Appearances for Plaintiff: Johnnie A. Jones
JONES & JONES

Appearances for Defendants: Samuel R. Cicero
CICERO and MOAK

1. JURISDICTION:

This Court has jurisdiction under 28 U.S.C. Section 1343 and 42 U.S.C. Section 1983. Jurisdiction is also invoked under 42 U.S.C. Section 1981 and 28 U.S.C. Section 1331. Additionally, jurisdiction is invoked under the First, Fourth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. Plaintiff invokes the Court's pendent jurisdiction as to claims arising under Article I, Sections 2 and 3 of the Louisiana Constitution of 1974, and under Louisiana Civil Code Article 2315.

2. PENDING MOTIONS:

There are no pending motions.

3. PLAINTIFF'S CLAIM:

- (a) On October 12, 1987 at approximately 8:20 a.m., the plaintiff, Peggy Robinson, was involved in an automobile accident with another car operated by Elizabeth B. Pulliam on Airline Highway.
- (b) As a result of the accident police officer, Randolph Pourciau, Jr., came to the scene of the accident and prepared an accident report.
- (c) Officer Randolph Pourciau, Jr. issued the plaintiff, Peggy Robinson, a courtesy card.
- (d) However, when Elizabeth B. Pulliam insisted that the officer issue the plaintiff a traffic ticket, Officer Randolph Pourciau, Jr., prepared a traffic ticket to issue to the plaintiff, Peggy Robinson.

- (e) After Officer Randolph Pourciau, Jr. prepared the traffic ticket, the plaintiff, Peggy Robinson, was asked to sign the traffic ticket and she refused.
- (f) When the plaintiff continually refused to sign the traffic ticket, Officer Randolph Pourciau, Jr. became violent and began shoving, pushing, punching, and striking the plaintiff, Peggy Robinson.
- (g) Because of Officer Pourciau's actions the plaintiff, Peggy Robinson, suffered serious injury.
- (h) When the incident occurred, the defendant, Officer Randolph Pourciau, Jr., was employed by the City of Baton Rouge in its police department.
- (i) The defendant, City of Baton Rouge, has a duty to instruct, teach, train, supervise, and control their employees in the proper manner in which to effect an arrest.
- (j) The manner in which the defendant, Officer Randolph Pourciau, Jr., placed the plaintiff, Peggy Robinson, under arrest was based on the specific instructions, teachings, training, supervision, and control that was learned from the defendant, City of Baton Rouge.
- (k) The defendant, Wayne Rogillio, has the responsibility and duty to implement the policies and practices of the City of Baton Rouge in the area of law enforcement.
- (l) The defendant, Wayne Rogillio, implements the policies and practices of the City of Baton Rouge in the area of law enforcement by instructing, teaching, training, supervising, and controlling police officers hired by the City of Baton Rouge.
- (m) The manner in which the defendant, Officer Randolph Pourciau, Jr., placed the plaintiff, Peggy Robinson, under arrest was based on the specific instructions, teachings, training, supervision, and control that the defendant, Wayne Rogillio, exercised over the defendant, Officer Randolph Pourciau, Jr.

- (n) Because of the instructions, teachings, training, supervision, and control that the defendants, City of Baton Rouge and Wayne Rogillio, exercised over its employees, the defendant, Officer Randolph Pourciau, Jr., used unreasonable and unwarranted force to cause severe injury to the plaintiff, Peggy Robinson.
- (o) The plaintiff, Peggy Robinson, is entitled to receive general and special damages from the defendants.
- (p) The plaintiff, Peggy Robinson, is entitled to receive reasonable attorney's fees from the defendants.
- (q) Randolph Pourciau, Jr., implementation of the City of Baton Rouge's instructions, training, supervision, control, policies and practices, through Wayne Rogillio, regarding the procedure for arrest while investigating an automobile accident, violated the plaintiff's Peggy Robinson, constitutional rights.
- (r) The type of action that the defendant, Randolph Pourciau, Jr., engaged in while investigating the automobile accident involving the plaintiff, represents the type of practice and policy that is commonly encouraged and engaged in by the defendant, City of Baton Rouge, through the defendant, Wayne Rogillio, by the Baton Rouge City Police Department.

4. DEFENDANTS' CLAIM:

- (a) The City of Baton Rouge and Wayne Rogillio deny that there is any policy within the Baton Rouge Police Department to deny equal protection of the law to blacks. These defendants also deny that their employees are not adequately trained.
- (b) Defendant, Randolph Pourciau, Jr., further shows that he acted at all times in good faith and with probable cause in affecting the arrest of plaintiff.

5. CLAIMS OF OTHER PARTIES:

None.

6. STATEMENT OF FACTS NOT IN DISPUTE:

- (a) An accident occurred on October 12, 1987, on Airline Highway between the plaintiff, Peggy Robinson, and Elizabeth B. Pulliam.
- (b) Defendant, Randolph Pourciau, Jr., investigated the accident.
- (c) On October 12, 1987, the defendant, Randolph Pourciau, Jr., placed the plaintiff, Peggy Robinson, under arrest.
- (d) Plaintiff, Peggy Robinson, is a black female.

7. CONTESTED ISSUES OF FACT:

- (a) Whether the manner in which the defendant, Randolph Pourciau, Jr., placed the plaintiff, Peggy Robinson, under arrest, violated her constitutional rights?
- (b) Whether the defendant, Randolph Pourciau, Jr., used excessive force in placing the plaintiff, Peggy Robinson, under arrest on October 12, 1987, while investigating an automobile accident?
- (c) Whether the defendant, City of Baton Rouge, through the defendant, Wayne Rogillio, properly instructed, taught, trained, supervised, and controlled its police officers in the proper procedure to make an arrest so as not to violate the plaintiffs constitutional rights?
- (d) Did the defendant, Randolph Pourciau, Jr., show lack of proper training and supervision in the method he used to arrest the plaintiff, Peggy Robinson?

8. CONTESTED ISSUES OF LAW:

- (a) Whether the defendant, Randolph Pourciau, Jr., violated the plaintiff's constitutional rights by the amount of force used to arrest the plaintiff, Peggy Robinson?
- (b) Whether the defendant, City of Baton Rouge, through the defendant, Wayne Rogillio, properly instructed, taught, trained, supervised, and controlled its police officers in the proper procedure to make an arrest so as not to violate the arrestee's constitutional rights?
- (c) Defendants' legal liability for damages if any to plaintiff.

9. EXHIBITS:

(a) Plaintiff's Exhibits:

- 1. Plaintiff's medical records from Baton Rouge General Hospital.
- 2. Plaintiff's medical report from Johnny V. Jenkins.
- 3. Statement of Officer Randolph Pourciau dated October 19, 1987.
- 4. Statement of Officer James Lynch dated October 19, 1987.
- 5. Statement of Joe Diejoia dated October 19, 1987.
- 6. Statement of Stephanie Templet dated October 19, 1987.
- 7. Statement of Michael Jones dated October 19, 1987.
- 8. Statement of Elizabeth Pulliam dated October 19, 1987.
- 9. Statement of Peggy Robinson dated October 19, 1987.
- 10. The recorded statements of each of the individuals listed above in 3 to 9.

11. Courtesy card issued by defendant, Randolph Pourciau, Jr., to the plaintiff, Peggy Robinson, on October 12, 1987.
12. Medical devices and contrivances used by the plaintiff, Peggy Robinson, during her convalescence and subsequent disability.
13. Any other exhibits which may be offered by any of the defendants.

(b) Defendant's Exhibits:

1. Letter dated June 2, 1988, from U.S. Justice Department to Officer Randolph Pourciau, Jr.
2. Any other exhibits which may be offered by the plaintiff.

- (c) If additional exhibits are to be offered by any party, counsel shall submit a list of the additional exhibits to the clerk and to opposing counsel at least twenty (20) days prior to the trial. Opposing counsel shall file objections, if any, to the supplemental exhibits at least ten (10) days prior to the trial. The pre-trial order shall not be amended to add additional exhibits within twenty (20) days of the trial unless good cause is shown and leave of Court is obtained.

10. WITNESSES:

(a) Plaintiff *May* call the following witnesses:

1. Peggy Robinson
2. Dr. Johnny V. Jenkins
3. Randolph Pourciau, Jr.
4. James Lynch
5. Joe Diejoia
6. Stephanie Templet

7. Michael Jones
8. Elizabeth Pulliam
9. Peggy Robinson
10. Catherine Green
11. Lt. G. Ellis
12. Sgt. C. Karras
13. Sgt. F. Gernant
14. Perry Johnson
15. Any other witness who may be called by any of the defendants.

(b) Defendants' *Will* call the following witnesses:

1. Randolph Pourciau, whose address is 704 Mayflower Street, who will testify concerning the events leading to the arrest of complainant.
2. James Lynch, Baton Rouge City Police, 704 Mayflower Street, who will testify concerning his observations at the scene of the arrest.
3. Elizabeth Pulliam, whose address is 7211 Melpomene Street, who will testify concerning the accident.
4. Richard Redd, Baton Rouge City Police Legal Advisor, 704 Mayflower Street, who will testify about policy, procedures, and training of Baton Rouge City Police Dept.

(c) Defendants *May* call the following witnesses:

1. Joe Diejoia, whose address is 8308 Airline Highway, may testify to the treatment of the complainant by officer Pourciau.

2. Stephanie Templet, whose address is 8309 Airline Highway, may testify to the treatment of the complainant by officer Pourciau.
 3. Any other witness who may be called by the plaintiff.
- (d) In the event there are other witnesses to be called at the trial, their names and addresses and the general subject matter of their testimony will be filed in the record of this case and reported to opposing counsel, in writing, at least twenty (20) days prior to trial. This restriction shall not apply to rebuttal witnesses, the necessity of whose testimony reasonably cannot be anticipated before the time of trial.

11. JURY INSTRUCTIONS:

No special jury instructions are anticipated to be filed. However, if any special jury instructions are filed, they will be timely filed pursuant to the rules and pretrial instructions of its Court.

12. AMENDMENTS TO THE PLEADINGS:

None.

13. SETTLEMENT:

The possibility of settlement has not been considered.

14. LENGTH OF TRIAL:

The probable length of trial is one day.

Respectfully submitted,

s/JOHNNIE A. JONES, JR.
Johnnie A. Jones, Jr., Attorney
JONES & JONES
The Taylor Building, Suite 215
251 Florida Street
Baton Rouge, LA 70802
Telephone: (504) 383-8573

s/SAMUEL R. CICERO
Samuel R. Cicero, Attorney
CICERO AND MOAK
4521 Jamestown Avenue, Suite 5
Baton Rouge, LA 70808-3265
Telephone: (504) 926-6820

s/FRANK J. POLOZOLA
Frank J. Polozola, Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY: JULY 5, 1989
POLOZOLA, J.

PEGGY ROBINSON
VERSUS
RANDOLPH POURCIAU, JR., ET AL

CIVIL ACTION NO. 88-860-B

A pretrial conference was held this date.

Present: Johnnie A. Jones
Attorney for plaintiff

Samuel R. Cicero
Attorney for defendants

Also

Present: Peggy Robinson

Supplementing the pretrial order:

The parties shall exchange all expert reports on or before August 7, 1989 or that expert shall not be allowed to testify at the trial.

The plaintiff will advise the Court on or before August 7, 1989 whether she will voluntarily dismiss her suit against the City of Baton Rouge and Wayne Rogillio.

Because of the difference in the element of proof and to avoid confusion before the jury, the Court declines to accept pendent jurisdiction over the state law claims and the state law claims will be dismissed without prejudice.

s/FRANK J. POLOZOLA
Frank J. Polozola
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF LOUISIANA

PEGGY ROBINSON,
Plaintiff,
VERSUS
RANDOLPH POURCIAU, JR.,
WAYNE ROGILLIO, and
PAT SCREEN,
Defendants.

CIVIL ACTION NO. 88-860
SECTION 'B'

MODIFICATION AND AMENDMENT
OF PRETRIAL ORDER

NOW INTO COURT, through her undersigned counsel of record, comes the plaintiff, PEGGY ROBINSON, who, in accordance with the provisions of Paragraph 10, Page 2, of the Pretrial Notice, Paragraphs 9(c) and 10(d) of the submitted Pretrial Order, and Rule 16(e) of the Federal Rules of Civil Procedure, 28 U.S.C., modifies and amends the Pretrial Order in the following respects:

9. EXHIBITS:

(a) Plaintiffs Exhibits:

Exhibit

1. Hospital Record, certified by Baton Rouge General Medical Center, re: Peggy H. Robinson, patient.
- 1.1 Invoice, No. 2737946, Smart Corporation;
- 1.2. Record Certification;
- 1.3. Plaintiffs Letter of Request for Record Certification;
- 1.4. Patient Record;
- 1.5. Discharge Summary;
- 1.6. History and Physical;
- 1.7. Progress Notes;
- 1.8. Department of Radiology Reports; and
- 1.9. Emergency Room Record.

Exhibit

2. Medicine Consultation Report.
- 2.1. The Medical Clinic Report by Dr. William H. Moore, dated July 15, 1987;
- 2.2. Doctors Notice of Admission;
- 2.3. Discharge Summary; and
- 2.4. Page 2, or signature page of Exhibit 2.

Exhibit

3. Emergency Medical Services Ambulance Run Report.

Exhibit

4. Neurology Medical Report by Dr. Neil Smith, III, M.D.

Exhibit

5. Obstetrics and Gynecology Report by Dr. J. Michaelson, Jr., M.D.

Exhibit

6. Report of Psychological Health Care Evaluation and Services, by Dr. Ivory L. Toldson, D.Ed. (Psychologist).

Exhibit

7. Personal Data re: Dr. Ivory L. Toldson, D.Ed.

Exhibit

8. Summary of Economic Calculations, by Dr. G. Randolph Rice, Ph.D. (Economist).

Exhibit

9. Curriculum Vitae re: Dr. G. Randolph Rice, Ph.D. (Economics)

Exhibit

10. Orthopedic Report by Dr. Alvin Stander. M.D.

Exhibit

11. Photographs of portions of Plaintiff's body taken by Willie Beathley during plaintiff's hospitalization subsequent to victimization by the defendants.

Exhibit

12. Photographs, taken by Bruce Childers of Investigation Unlimited, of damaged portions of Plaintiff's automobile which was involved in the accident which fomented the alleged police brutality and the unnecessary use of excessive force.

Exhibit

13. Statement of Emerson Williams, being interviewed by Bruce Childers of Investigation Unlimited.

Exhibit

14. Courtesy Card Traffic Ticket, which the accident investigation officer first issued after arriving upon the scene of the accident; and then released the parties to the accident to civilly settle their dispute.

Exhibit

15. Statement of PEGGY ROBINSON, plaintiff, Page 12, IAD # 228-87, 10/19/87.

Exhibit

16. Statement of Stephanie Templet, witness, Page 8, IAD # 228-87, 10/19/87.

Exhibit

17. Statement of Michael Jones, witness, Page 9, IAD # 228-87, 10/19/87.

Exhibit

18. Statement and Itemized Bill for Professional Services Rendered by Dr. Ivory L. Toldson, D. Ed. (Psychologist).

Exhibit

19. Statement and Bill of Dr. Alvin Stander for professional services rendered.

Exhibit

20. Statements of Our Lady of the Lake Regional Medical Center, for professional services rendered.

Exhibit

21. Statement of Digital Diagnostic Center, for professional services rendered in connection with Dr. Neil A. Smith's referral.

Exhibit

22. Statement(s) and Itemized Bill(s) of Baton Rouge General Medical Center for professional services rendered.

Exhibit

23. Statement and Bill of Dr. William H. Moore, for professional services rendered.

WITNESSES:

(a) Plaintiff *Will Call* the following witnesses:

1. Peggy H. Robinson, Plaintiff
2850 77th Avenue
Baton Rouge, Louisiana 70807

Re: The facts, how the accident occurred; the occurrences and circumstances immediately following the automobile accident; the consequence of acts immediately subsequent to the automobile accident; the action and acts of the accident investigating officer immediately after arriving upon the scene of the accident; the action and acts of the accident investigating officer within minimal lapse of time subsequent to arriving upon the scene of the automobile accident; the accident investigating officers' attitudinal disposition towards her, their issuance of traffic tickets, their physical assault upon her person, their unlawful arrest, their fomentation of false criminal charges and

precipitation of false imprisonment and malicious prosecution; the extent of bodily injury, mental anguish, and medical care, damages, and loss of income in her self-employment and professionalism.

The enumerations hereof are not to be construed, in anywise, to be factually restrictive; and, therefore, are nonexclusive.

2. Bruce Childers
Investigation Unlimited
717 Royal Street
Baton Rouge, Louisiana 70802
Re: Made photographs of Plaintiff's wreck-involved automobile; and post accident and police brutality investigation, which included interviewing of witnesses.
3. Willie Beathley
6249 St. Pius Avenue
or 1926 Wooddale Boulevard
Baton Rouge, Louisiana 70811 or 70806
Re: Made photographs of portion of Plaintiff's body while hospitalized from the brutal assault and bodily injury inflicted upon her person as a victim of police brutality.
4. Dr. Johnny V. Jenkins, M.D.
7414 Picardy Avenue
Baton Rouge, Louisiana 70808
Re: Medical Expert witness—cf. report, Exhibits 1.5 and 1.6.
5. Dr. Neil Smith, III, M.D.
2223 Quail Run, Suite D-1
Baton Rouge, Louisiana 70808
Re: Medical Expert witness—cf. report, Exhibit 4.

6. Alan T. Ashley, Ambulance Attendant
Emergency Medical Service
704 Mayflower Street
Baton Rouge, Louisiana 70802
Re: Factual—cf. report, Exhibit 3.
7. S. Wilkinson, Ambulance Attendant
704 Mayflower Street
Baton Rouge, Louisiana 70802
Re: Factual—cf. report, Exhibit 3.
8. Dr. Ivory L. Toldson D.Ed.
4420 North Boulevard—Suite 103
Baton Rouge, Louisiana 70806
Re: Expert Psychologist—cf. report, Exhibit 6.
9. Dr. G. Randolph Rice, Ph.D.
3121 McConnell Drive
Baton Rouge, Louisiana 70809
Re: Expert Economist—cf. report, Exhibit 8.
10. Stephanie Templet
c/o ADJ Seafood
8308 Airline Highway (70815)
or 7940 Florida Boulevard (70806)
8261 Airline Highway—Lot # 4 (Trailer)
Baton Rouge, Louisiana 70815
Re: Factual—cf. Exhibit 16.
11. Michael Jones
c/o ADJ Seafood
8308 Airline Highway (70815)
or 7940 Florida Boulevard (70806)
2806 Fairfields Avenue
Baton Rouge, Louisiana 70802
Re: Factual—cf. Exhibit 17.
12. Perry Johnson
c/o ADJ Seafood Market
8308 Airline Highway (70815)
or 7940 Florida Boulevard
Baton Rouge, Louisiana 70806

Re: Facts occurring at the scene of the arrest and the appearance and condition of Plaintiff at that scene; the conduct of the arresting officer; and the unnecessary and excessive force employed by the arresting officer and inflicted upon Plaintiff.

13. Emerson Williams
c/o ADJ Seafood Market
3808 Airline Highway (70815)
or 7940 Florida Boulevard (70806)
9698 Florida Boulevard, Apt. # 260
Baton Rouge, Louisiana 70815

Re: Facts—cf. Bruce Childers interviewing interrogation statement of the witness.
Cf. Exhibit 13.

14. Authea Franklin, Security Officer
Louisiana State Department of
Transportation and Development
1201 Capitol Access Road
Baton Rouge, Louisiana 70802

Re: Facts pertaining to Plaintiffs unstable condition, fears and phobias related to or growing out of the encountered police brutality.

15. Leonard A. Robinson, Sr. (Plaintiff's Husband)
2850 77th Avenue
Baton Rouge, Louisiana 70807

Re: Facts pertaining to Plaintiff's disorientation, physical and mental incapacitation and incompatibility brought on by or made worse and mirroring and traceable to the encountered police brutality.

16. Lenora Robinson Charles (Plaintiff's Daughter)
2850 77th Avenue
Baton Rouge, Louisiana 70807

Re: Facts of Plaintiff's illusionary flights and night-mares' visitations and unusual nervousness appearing to be an emotional or psychological disorder due to and traceable to, or enhanced and aggravated by the encounter with the defendant police officer.

(b) Plaintiff *May Call* the following witnesses:

1. Richard Redd, Legal Advisor
Baton Rouge City Department of Police
704 Mayflower Street
Baton Rouge, Louisiana 70802

Re: Facts relative to policy, procedures, training, condonation of police brutality by Baton Rouge City Police Department; and the participation and frequency of such involvements by the defendants.

2. Joe Diejoia
c/o ADJ Seafood Market
8308 Airline Highway (70815)
or 7940 Florida Boulevard
Baton Rouge, Louisiana 70806

Re: Facts relative to his limited observations at the scene of the arrest.

3. Lt. G. Ellis, Investigating Officer
Internal Affairs Division
Baton Rouge Police Department
704 Mayflower Street
Baton Rouge, Louisiana 70802

Re: Facts relative to the frequency of the City Department of Police being involved in police brutality cases by its officers; and the number of (i.e., how many) times the defendant, Randolph Pourciau, has been investigated for, or have had complaints of unnecessary force, excessive force, authoritative abuse, abusive

use of authority and power, or police brutality complaints alleged against him for the period commencing five (5) years next preceding the date he arrested the plaintiff, PEGGY ROBINSON, to and including the date on which this case goes to trial.

4. Dr. Alvin Stander, M.D.
The Bone and Joint Clinic of Baton Rouge, Inc.
Practice Limited to Orthopedic Surgery
5630 Bankers Avenue
Baton Rouge, Louisiana 70808
Re: Medical Expert witness—cf. report,
Exhibit 10.
5. Dr. J. Michaelson, Jr., M.D.
Drs. Michaelson & Schexnayder
Obstetrics and Gynecology
8786 Goodwood Boulevard, Suite 104
Baton Rouge, Louisiana 70806
Re: Medical Expert witness—cf. report, Exhibit 5.
6. Any party, any witness called by any party, any witness enumerated or listed by any party and subject to call by any party.

Plaintiff, PEGGY ROBINSON, does not anticipate any necessity to further modify, amend, and/or supplement the hereinbefore filed *Pretrial Order*; but, however, if such necessity does arise, Plaintiff will timely report same to opposing counsel in accordance with the rules of the Court, or as circumstances permit.

Respectfully submitted,
Attorneys for Plaintiff:

s/JOHNNIE A. JONES
Johnnie A. Jones (Bar # 8329)
and
Johnnie A. Jones, Jr. (Bar # 1083)
Co-counsel of Record
JONES & JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff, Peggy Robinson, does hereby certify that a copy of the above and foregoing Modification and Amendment of Pretrial Order is being forwarded by regular United States Mail, first-class postage prepaid, to the opposing counsel of record, addressed as follows:

Mr. Samuel R. Cicero
CICERO & MOAK
Attorneys and Counselors at Law
4521 Jamestown Avenue, Suite 5
Baton Rouge, Louisiana 70808-3265
Telephone: 504/926-6820

Baton Rouge, Louisiana, this 18th day of September, 1989.

s/JOHNNIE A. JONES
Johnnie A. Jones (Bar # 8329)